

Annexation Agreements and Cooperative Economic Development Agreements

Introduction

Annexation agreements and cooperative economic development agreements (CEDA's) were established for the purpose of facilitating cooperation between and among local governments to promote economic development or providing appropriate public services to further growth in a local community. Annexation agreements are authorized and described in ORC 709.192 of SB 5. CEDA's were enacted as ORC 701.07 contained in HB 434 of the 122nd General Assembly and were effective in March 1999.

The provisions regarding their formation and subject matter which may be addressed by the two different agreements are almost identical. There are only very minor variances between the two sections. The emphasis is upon negotiation and agreement between municipal and township governments for a service plan which is structured to benefit a specified territory defined in the agreement.

ORC 701.07
ORC 709.192

These agreements are of relevance to county commissioners in annexation matters in four ways:

- A. The county may be asked to become a party to an agreement.
- B. An agreement is a required element for an Expedited Type 1 Annexation.
- C. Withdrawal of territory from a township may be affected by an agreement.
- D. "Compensation to townships," also referred to as "reparations" or "revenue sharing," required as a result of a regular annexation may be affected by an agreement.

Creation of Agreements

The primary parties to an agreement are municipal and township governments. The county may be a party to an agreement. County participation, however, requires both a resolution of the board and the separate approval of each municipality and township that are parties to the agreement. The State of Ohio or any other entity may also become a party to the agreement with the separate approval of each municipality and township that are parties to the agreement. These agreements may be entered into for any length of time and may be amended or extended at any time. Major distinctions between the creation of an annexation agreement or a CEDA are:

| Issue | Annexation Agreement | CEDA |
|-------------------|---|---|
| Parties | Only the municipality involved in the annexation and one or more township(s). | One or more cities and/or one or more townships. |
| State Involvement | Requires approval of the Director of Development. | Requires approval of the Governor. |
| Public Approval | None required. | Public inspection of the agreement. Available for 30 days prior to a public hearing jointly held by the municipality and township(s). |

Contents of Agreements

Ohio law authorizing both types of agreements contains exhaustive lists of services, functions, and activities that any one of the parties may undertake to facilitate the purpose of an agreement. The law also includes a final “catch all” provision which allows the parties to contract on “any other matter” generally concerning annexation or development. The sections also indicate that the terms of an agreement are to be given a liberal construction in order to allow the governments maximum flexibility in accomplishing the goals they intended by the entering into an agreement.

While the agreements may not provide for the sharing of the proceeds of any tax levy between the local governments, they may allow the local government collecting the property tax to use the proceeds to make payments authorized by the agreement. The only restraint upon the terms of an agreement is that it must not be in derogation of municipal “home rule” powers, any other provision of the Ohio Constitution, or of the provisions of the charter of a municipality that is a party to the agreement.

The following table summarizes the permissible provisions of both annexation agreements and cooperative economic development agreements:

| Annexation Agreement | Cooperative Economic Development Agreement |
|--|--|
| Territory to be annexed. | Same. |
| Periods of time during which no annexations will occur and any areas that will not be annexed. | Same. |
| Land use planning matters. | No provision. |
| Provision of joint services and permanent improvements within incorporated and unincorporated areas. | Same. |
| Provision of services and improvements by municipality in unincorporated areas. | Same. |

| Annexation Agreement | Cooperative Economic Development Agreement |
|---|---|
| Provision of services and improvements by township in municipality. | Provision of services and improvements by county or township in municipality. |
| Payment of services fees to municipality by township. | Payment of services to municipality by county or township. |
| Payment of service fees to township by municipality. | Payment of service fees to township or county by municipality. |
| Reallocation of inside millage between municipality and township in areas annexed. | No provision. |
| Issuance of debt by municipality or township for public purposes authorized under the agreement and provisions for debt retirement. | Issuance of debt by municipality, county, or township for public purpose under the agreement and provisions for debt service. |
| No provision. | Issuance of industrial revenue bonds by municipality to finance projects under the agreement outside of the municipality and debt service provisions. Municipality may also undertake projects under ORC Chapters 165, 761, or 902 dealing with industrial revenue bonds, municipal economic development, and agricultural finance outside of municipality. |
| Agreements by municipality and township with owners or developers of land proposed to be annexed concerning the provision of public services, facilities, and permanent improvements. | Agreements by municipality and township or municipality and county with landowner or developers concerning the provision of public services, facilities, and permanent improvements. |
| The application of tax abatement statutes. | Same. |
| Changing township boundaries to exclude newly annexed territory under Chapter 503 and the provision of services to the territory. | Same. |
| No provision. | Earmarking by municipality from its general fund of a portion of utility charges it collects outside of the municipality if agreement does not include matters relating to annexation. |
| Payments in lieu of taxes to be paid to township by municipality which may be in addition to or in lieu of other payments required by law. | Same. |
| Any other matter pertaining to annexation or development of publicly or privately-owned territory. | Same. |

County Commissioner Considerations

The county may be asked to become a party to an agreement by the municipality and township. Under both types of agreements, a county may become a party to an agreement if it chooses to do so. Commissioners must adopt a resolution authorizing the county's participation, and each municipality and township must also approve the county's participation. In the case of an annexation agreement only, if the State of Ohio is a party, the Director of Development must also approve the county's participation.

Under ORC 709.022 for Expedited Type 1 Annexations, the petition may not even be filed unless accompanied by a certified copy of an annexation agreement or CEDA adopted between the municipality annexing the territory and all the townships which include territory that is part of the proposed annexation.

Under ORC 709.023 for Expedited Type 2 Annexations and ORC 709.024 for Expedited Type 3 Annexations, the territory to be annexed may not be excluded from the township and is to remain a part of the township's tax base. However, if an annexation agreement or CEDA adopted prior to the annexation allows for the property to be excluded, the terms of the agreement take precedent over the statute.

In the case of regular annexations under ORC 709.033, the annexation law provides for "reparation payments" to be made by the municipality to the township if the property is excluded from the township under ORC 503.07. The schedule of payments is explained in Chapter 11 of this manual, and provided for in ORC 709.19. If, however, an annexation agreement or CEDA is executed that makes provisions that are different from the default provisions specified in ORC 709.19, the provisions included in the agreement prevail.

Property Tax Payments to Townships by Municipalities Following Annexation & Removal of Territory

Background

While annexation is the process of extending a municipality's boundaries outward, such process does not automatically result in the removal of land from the township in which it is situated. A second process, commonly referred to as "withdrawal" or the land being "excluded," must occur to remove the land from the township's jurisdiction and change the township's boundaries.

When land is annexed and removed from the township of origin, the new law will require the municipality receiving the territory to provide compensation for lost property tax to the township of origin. These payments are sometimes referred to as "reparations" or "revenue sharing" and are supposed to help compensate, on a limited basis, the township for the loss of the land and its tax revenue.

The new law provides for a 12-year declining payment schedule when land is excluded from the township subsequent to an annexation petition filed under the new law starting October 26, 2001. Withdrawals which occur on or after October 26, 2001, but whose annexation was effective prior to October 26, 2001, are not subject to the mandatory payment schedule outlined in this chapter.

However, a municipality and township may develop an alternative arrangement through annexation agreements, cooperative economic development agreements, and alternative reparations agreements. These agreements apply in lieu of the payment scheduled outlined in this chapter.

Standard Compensation for Residential & Retail Property

The terms "residential" and "retail" property mean property classified as such by the tax commissioner for the purposes of valuing property for taxation. No "retail" property is to be included with property classified as "commercial" property.

When territory is annexed and excluded from the township, the municipality receiving the territory must make payments to the township. The following schedule is based on land that is classified as "residential" or "retail" property using the property valuation for the year that the payment is due (rather than at the time the annexation occurred), and includes the percentage of township taxes due the township if annexation had not occurred:

ORC 709.19
(A) & (D)

- A. Years 1 through 3 — 80.0%
- B. Years 4 through 5 — 52.5%
- C. Years 6 through 10 — 40.0%
- D. Years 11 through 12 — 27.5%
- E. After year 12 — 0%

Standard Compensation for Commercial & Industrial Property

The terms “commercial” and “industrial” property mean property classified as such by the tax commissioner for the purposes of valuing property for taxation. “Commercial” property does not include any property classified as “retail.”

When territory is annexed and excluded from the township, the municipality receiving the territory must make payments to such township. The following schedule is based on land that is classified as “commercial” or “industrial” property using the property valuation for the year that the payment is due (rather than at the time the annexation occurred) and includes the percentage of township taxes due the township for commercial and industrial real, personal, and public utility property taxes due the township if no annexation had occurred:

**ORC 709.19
(A) & (C)**

- A. Years 1 through 3 — 80.0%
- B. Years 4 through 5 — 67.5%
- C. Years 6 through 7 — 62.5%
- D. Years 8 through 9 — 57.5%
- E. Years 10 through 12 — 42.5%
- F. After year 12 — 0%

If tax abatements have been granted by the municipality on all or portions of the territory annexed and excluded, the municipality is still responsible to make the payments outlined above, as if the tax abatements had not been granted. No reduction is granted.

Alternative Compensation Agreements

Alternative compensation agreements may be negotiated and accepted by both the municipality and townships. Two methods are through annexation agreements and cooperative economic development agreements, which are discussed further in Chapter 10.

A third method is through alternative reparations agreements authorized under ORC 709.191 which was not changed by the new annexation law. This section provides that, in lieu of making the standard compensation payments and for any proposed annexation that does not require payments, the municipality and township can enter into an agreement to make annual payments to the township to compensate for lost tax revenues. The agreement must state the amount of the payments and the number of payments to be

**ORC 709.19 (B)
ORC 709.191**

made. It appears, however, that this current section of law may no longer have practical applicability given the changes that have been made in ORC 709.19.

If a municipality fails to make a payment pursuant to a reparations agreement, the township must notify the county budget commission in writing of the amount owed by the municipality. The county budget commission shall reduce the amount apportioned to the municipality from the undivided local government fund by the amount of the payment due the township and increase, by an equal amount, the amount apportioned to the township from the undivided local government fund.

International Airport Provision

A municipality may annex an international airport that the municipality owns. If it does, the municipality must pay the township 100% of the township taxes in the annexed territory that would have been due the township if the annexation had not occurred. The payments are to last for the next 25 years annually, unless the municipality and township enter into an alternative contract.

Under an alternative contract, the township agrees to provide the annexed territory with police, fire, or other services it is authorized to provide in exchange for specific consideration as agreed upon by the municipality and township. In no instance can the consideration received by the township be less than the payments the township would have received without an alternative contract - that is, 100% of the township taxes each year for 25 years.

It should also be noted that no territory annexed as an international airport owned by a municipality shall be considered part of the municipality for the purposes of subsequent annexation, except that the board of county commissioners may authorize subsequent annexation under these circumstances if the board determines that subsequent annexation is necessary to the continued operation of the international airport.

**ORC 709.19
(E) & (F)**